

JUL 11 1996

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of	:	
	:	
Implementation of the	:	C.C. Docket No. 96-115
Telecommunications Act of 1996:	:	
	:	
Telecommunications Carriers' Use	:	
of Customer Proprietary Network	:	
Information and Other Customer	:	
Information	:	

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**COMMENTS OF COMPUSERVE INCORPORATED**

CompuServe Incorporated ("CompuServe"), by its attorneys and pursuant to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM"), released on May 17, 1996, hereby submits these Comments in the above-referenced proceeding.

**I. BACKGROUND**

CompuServe is one of the world's leading providers of information and Internet access services. CompuServe acquires regulated basic communications services from facilities-based carriers and it combines these underlying basic services with computer processing applications to offer a wide variety of enhanced online and database services to more than 4.7 million members in over 140 nations. Through its interactive proprietary and Internet access services, CompuServe allows people to bank, shop, and make travel reservations from their homes; access up-to-the-minute news, weather, financial, and sports information;

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utilize a host of instructional, educational, scientific, and other reference databases; participate interactively in special interest forums and electronic bulletin boards on a wide range of subjects; and send/receive electronic mail.

CompuServe agrees with the Commission's determination that in light of passage of the Telecommunications Act of 1996, specifically section 702 of that Act<sup>1/</sup>, this proceeding is necessary in order to specify and clarify the obligations of telecommunications carriers when they seek to gain access to or use customer proprietary network information ("CPNI"). As a leading non-telephone company related enhanced service provider ("ESP"), CompuServe's interest in this proceeding, in addition to its interest in the protection of the privacy of basic service customers, is to ensure that rules governing access to CPNI do not afford ESPs affiliated with basic service telecommunications carriers an undue competitive advantage.<sup>2/</sup>

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<sup>1/</sup> 47 U.S.C. § 222(c)(1) ("Section 222(c)(1)"). Section 222(c)(1) provides:

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service. . .

<sup>2/</sup> CompuServe recognizes that in enacting section 222, Congress also sought to promote consumer privacy interests. H.R. Rep. No. (continued...)

From the standpoint of creating a fair competitive environment, and consistent with its comments submitted in prior and related Commission proceedings,<sup>3/</sup> CompuServe continues to favor establishment of uniform prior written consent requirements regarding ESPs' access to CPNI. Under the current regulations promulgated in the Computer II and Computer III proceedings, unaffiliated enhanced service providers such as CompuServe must obtain affirmative written authorization of customers in order to obtain access to CPNI maintained by BOCs, GTE, AT&T, and other carriers.<sup>4/</sup> In contrast, the information service businesses of the BOCs and GTE may obtain nonconsensual access to and use of CPNI pertaining to their own customers who have less than 20 lines; affirmative written authorization is required only if a

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<sup>2/</sup> (...continued)

458, 104th Cong., 2d Sess. 205 (1996). CompuServe's proposals regarding access and use restrictions on CPNI are fully consistent with protecting the privacy of basic service ratepayers.

<sup>3/</sup> Additional Comments of CompuServe Incorporated on Rules Governing Telephone Companies' use of Customer Proprietary Network Information, CC Docket Nos. 90-623, 92-256, filed April 11, 1994; Comments of CompuServe Incorporated, CC Docket No. 90-623, filed March 8, 1991; Reply Comments of CompuServe Incorporated, CC Docket No. 90-623, filed April 8, 1991; see also Discussion Draft of the Telephone Consumer Privacy Protection Act of 1993: Hearings Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong., 1st Sess. (1993) (statement of Kent D. Stuckey, General Counsel and Secretary, CompuServe Incorporated).

<sup>4/</sup> Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd. 7571, 7605, ¶ 75 (1991).

customer has more than 20 lines.<sup>5/</sup> Furthermore, AT&T and independent local exchange carriers presently are not required to obtain any type of authorization in order to gain access to and use of CPNI of any of their customers.

## II. DISCUSSION

The Commission's rules favoring greater access to CPNI by telecommunications carriers as opposed to independent ESPs can no longer be justified under Section 222(c). The Commission acknowledges in the NPRM that it may not enforce CPNI requirements that are inconsistent with the new statutory regime.<sup>6/</sup> By its own terms, Section 222(c)(1) requires that a carrier obtain approval in all circumstances where it seeks to use CPNI to help it render a different telecommunications service. As the Commission recognizes in the NPRM, this restriction is necessary in order to prevent "established providers of certain telecommunications services from gaining an unfair advantage by using CPNI to facilitate their entry into new telecommunications services without obtaining prior customer authorization."<sup>7/</sup> And, more to the point for present purposes, the Commission is correct in concluding that "CPNI obtained from the provision of any telecommunications service may not be used

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<sup>5/</sup> Id. at 7609, ¶ 84.

<sup>6/</sup> See NPRM at ¶ 38.

<sup>7/</sup> Id. ¶ 24.

to market information services. . . without prior customer authorization."<sup>8/</sup> CompuServe urges the Commission to re-emphasize this conclusion in the final order it adopts.

Furthermore, the Commission should require that telecommunications carriers obtain written authorization in all circumstances before they can utilize CPNI for any purpose not specified in Section 222(c)(1). While Section 222(c)(1), when read alone, may not explicitly specify the procedure through which a carrier must seek approval,<sup>9/</sup> a written authorization requirement is implicit in Section 222(c)(1). When read in conjunction with Section 222(c)(2)'s requirement that telecommunications carriers disclose CPNI to others only upon written request,<sup>10/</sup> it is clear that Congress intended the means of securing customer consent to be by written authorization. The competitive and privacy concerns implicated when an ESP seeks access to CPNI are the same regardless of whether the information was obtained originally by an affiliated or an unaffiliated entity. As such, Congress could not have intended a different result between these two scenarios.

Moreover, consistent with Congress' intent, the Commission should adopt a uniform written authorization requirement in order to create a fair competitive environment

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<sup>8/</sup> Id. at ¶ 26.

<sup>9/</sup> See id. at ¶ 27.

<sup>10/</sup> 47 U.S.C. § 222(c)(2).

between independent ESPs and ESPs affiliated with telecommunications carriers. The Commission acknowledges in the NPRM that "[w]ritten authorization provides greater protection to both customers and carriers than oral authorization, in that the former advises customers in writing of their CPNI rights and provides the carrier with evidence that it has obtained customer approval."<sup>11/</sup> CompuServe believes that the evidentiary benefits resulting from mandatory written authorization outweigh the minimal burden that would be imposed on carriers. As the Commission suggests in the NPRM, prior authorization could take the form of a letter or billing insert clearly explaining the customer's options accompanied by a postcard which the customer could sign and return to authorize CPNI use.<sup>12/</sup>

Finally, by its terms, Section 222(c)(1) applies to every "telecommunications carrier." Thus, Section 222(c)(1)'s requirement that carriers obtain prior authorization applies to the BOCs, interlata carriers, GTE, and all independent local exchange carriers, not just local exchange carriers, or some subset of them. In Section 222(c)(1), Congress did not distinguish among carriers according to size, and in not doing so, it recognized that all basic service providers, regardless of market power, are in a position to leverage their unique access to CPNI to gain a competitive advantage over independent ESPs

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<sup>11/</sup> NPRM at 15.

<sup>12/</sup> Id.

such as CompuServe. In fact, the legislative history indicates that Congress ultimately rejected the position the original Senate bill which only restricted BOC use of CPNI.<sup>13/</sup> Consequently, the Commission must promulgate rules to prohibit nonconsensual use of CPNI by all telecommunications carriers.

### **III. CONCLUSION**

The Commission's existing CPNI rules are now inconsistent with new Section 222(c) of the Communications Act. Moreover, they unjustifiably afford telecommunications carriers who are engaged in providing basic services an unfair competitive advantage in the enhanced services marketplace. In order to eliminate the competitive disparity, the Commission must promulgate rules governing CPNI access and use which should require all telecommunications carriers to obtain prior written customer authorization before they are permitted access to and

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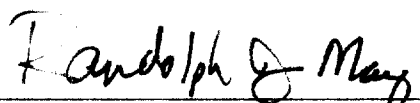
<sup>13/</sup> See S.652, 104th Cong., 1st Sess., § 102 (1995).

use of CPNI obtained through their provision of basic telecommunications services in their provision of information services.

Respectfully submitted,

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June 11, 1996



CERTIFICATE OF SERVICE

I, Teresa Ann Pumphrey, do hereby certify that true and correct copies of the foregoing document, "Comments of CompuServe Incorporated," were served by first-class U.S. Mail, postage prepaid, this 11th day of June, 1996, on the following:

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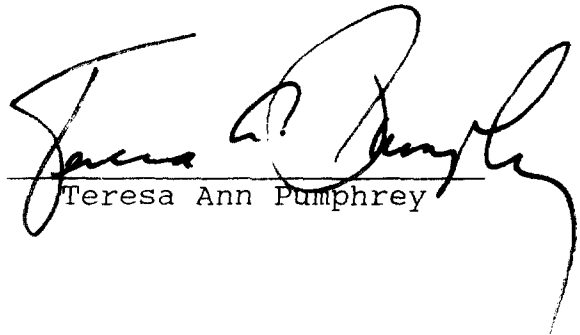
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